

REMARKS

The present Amendment is in response to the Official Action mailed June 30, 2006. Claims 3, 19, 25, 26, 29 and 31 have been amended. Claims 32-38 have been cancelled. Therefore, claims 1-31 and 39-42 remain currently pending in the present application. Applicant sets forth remarks relating to the Official Action below.

In response to the requirement for restriction previously required under 35 U.S.C. § 121, Applicant hereby affirms the previous election of claims 1-31 and 39-42, and cancels claims 32-38 accordingly. Applicant thanks the Examiner for pointing out and including claims 39-42 in the elected invention I. Although claims 32-38 have been cancelled herein, Applicant reserves the right to pursue such cancelled claims in any divisional and/or continuation cases relating to the present application.

In the Official Action, the Examiner first rejected claims 1-5, 7-16, 19-31 and 39-42 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,146,383 to Studer et al. ("Studer"). Essentially, it is the Examiner's opinion that Studer teaches each and every one of the limitations set forth in such claims. Further, the Examiner rejected claims 17-18 under 35 U.S.C. § 103(a) as being unpatentable over Studer in view of U.S. Patent No. 6,123,706 to Lange ("Lange") and claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Studer in view of U.S. Patent No. 6,280,443 to Gu et al. ("Gu"). In the Examiner's opinion, claims 6 and 17-18 include limitations not specifically taught by Studer, but which are obvious in view of Gu and Lange. Applicant disagrees with each of the Examiner's above-noted assertions.

The Examiner contends that axial and sliding movement similar to that disclosed in the present application may be achieved between coupling element (3) and fixation element (1)

of Studer. The Examiner cites the differences between FIGS. 1 and 2 of Studer to represent sliding and axial movement. Applicant respectfully disagrees with this contention. While there appears to be axial movement between coupling element (3) and fixation element (1) of Studer, there is no sliding. In fact, head part (2), which is engaged within coupling element (3), is screwed into fixation element (1). As such, there can clearly be no sliding of the elements. This is a very important feature of the present invention, as allowing such sliding is highly beneficial during a procedure utilizing the apparatus taught in the present application. During such a procedure, the unitary coupling containing a ball ring may be slid over the fixation device in a quick manner, rather than having to be screwed into place. The latter configuration clearly requires more dexterity and can be time consuming. Additionally, with the apparatus of the present invention, the height of the unitary coupling could be altered slightly at the surgical site simply by raising or lowering it within the ball ring in relation to the fixation device, even if the spinal rod has already been affixed. If the device requires screwing (like Studer) to make such adjustment, then it would be more difficult, or impossible (depending upon other elements involved in the system) to make such an adjustment once the spinal rod is affixed. Thus, the present invention provides a novel, unobvious and highly beneficial device for use in spinal surgery.

Of the claims rejected under § 102, claims 1, 19, 25, 26, 29 and 31 are independent. Of the independent claims only independent claim 1 as originally presented required sliding. In view of the above arguments, Applicant respectfully submits that, on its face, such claim overcomes the '102 rejections in view of Studer. In addition, Applicant has amended remaining independent claims, namely claims 19, 25, 26, 29 and 31, to

require a sliding cooperation between the unitary coupling element and the head portion of the fixation member. Once again, for at least the reasons set forth above, Applicant respectfully submits that such claims now also clearly overcome the Studer reference.

As the remaining claims in the present application are dependent claims which properly depend upon one of independent claims 1, 19, 25, 26, 29, or 31, such claims should necessarily be allowed. A dependent claim is necessarily narrower than an independent claim from which it properly depends. As such claims are proper dependent claims of the already noted allowable independent claims, they are necessarily allowable. In addition, Applicant notes that because the Studer reference clearly does not teach at least one inventive feature of the present invention, such reference can likewise not be utilized in rejecting claims 6 and 17-18 as obvious, even when combined with Lange and/or Gu.

Therefore, in light of all of the above, Applicant respectfully submits that claims 1-31 and 39-42 distinguish over the cited prior art. As such, Applicant respectfully requests that such claims be moved into a condition of allowance.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.


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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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